

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID WAYNE ELMORE,

Plaintiff,

No. CIV S-04-2657 GEB EFB P

vs.

TOM L. CAREY, et al.,

Defendants.

ORDER

Plaintiff is a state prisoner prosecuting this civil rights action without counsel. On November 29, 2006, defendants filed a request to vacate the dates in the court's March 22, 2006, scheduling order because there is a pending motion for summary judgment that has not yet been ruled on by the court. Defendants note that on December 7, 2006, plaintiff requested an extension of time to file and serve a pretrial statement. Good cause appearing, defendants' request will be granted. Vacating these dates renders moot plaintiff's request to extend the time for filing his pretrial statement. Accordingly, that request is denied as moot.

On November 9, 2006, plaintiff requested an extension of time in which to file and serve an opposition to defendants' motion for summary judgment. However, he filed declarations in opposition to defendants' motion for summary judgment on November 28, 2006. Moreover, the order filed December 8, 2006, granted plaintiff an extension of time in which to file such

1 documents. Accordingly, plaintiff's opposition is deemed timely filed and the motion is  
2 submitted. *See* Local Rule 78-230(m).

3 In accordance with the above, IT IS HEREBY ORDERED that:

4 1. Defendants' November 29, 2006, request to vacate the dates in the court's March 22,  
5 2006, scheduling order is granted;

6 2. The November 24, 2006, and December 8, 2006, dates by which plaintiff and defendants  
7 were respectively ordered to file pretrial statements are vacated. The December 15, 2006, pretrial  
8 conference date is vacated, and the March 6, 2007, trial date is vacated. *See* Fed. R. Civ. P. 16(b).

9 3. Plaintiff's December 7, 2006, request for an extension of time to file and serve a pretrial  
10 statement is denied as moot;

11 4. Plaintiff's December 7, 2006, request for an extension of time in which to file and serve  
12 his pretrial statement is denied as moot;

13 5. In view of the court's December 8, 2006, order granting plaintiff an extension of time in  
14 which to file and serve an opposition to defendant's motion for summary judgment, plaintiff's  
15 November 28, 2006, declarations in opposition to said motion are deemed timely filed and the  
16 motion is submitted.

17 Dated: December 19, 2006.

18   
19 EDMUND F. BRENNAN  
20 UNITED STATES MAGISTRATE JUDGE  
21  
22  
23  
24  
25  
26